

Dharma and Rule of Law: Traces from Hindu Jurisprudence

Op-Ed

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When Chief Justice Edward Coke told King James I that the Crown stood not above the law but beneath it, he was articulating a principle that the *Bṛhadāranyaka Upaniṣad* had declared some two thousand years earlier. That text's formulation, *dharma* as the “sovereign power of sovereign power,” before which even the mighty must yield to the weak, was not a vague spiritual aspiration. It was a structural claim about the nature of political authority: that legitimate governance requires submission to a normative order no ruler can override. The Western canon, from Magna Carta through Dicey, arrived at this insight by a long and circuitous path. The Indic tradition began there.

The standard genealogy of the Rule of Law runs through familiar landmarks. Dicey reduced it to three propositions: no punishment without breach of established law, equality of all persons before the ordinary courts, and constitutional principles derived from judicial decisions rather than executive decree. Coke, in the *Case of Prohibitions* (1607), anchored royal authority beneath “God and the law.” John Adams enshrined it in the Massachusetts Constitution of 1780, insisting that the idea of any person born a magistrate or lawgiver is “absurd and unnatural.” These were momentous achievements. But they were achievements of *rediscovery*, not invention, formulations of a principle whose deepest elaboration had already occurred in a civilisational tradition that Western jurisprudence, until very recently, chose not to see.

The foundation is *Ṛta*, cosmic order, the organising principle of the Ṛgveda, appearing roughly 390 times across its hymns (c. 1500–1200 BCE). *Ṛta* was not personified as a deity; it was understood as the structure of reality itself, binding even the gods. Varuṇa, the supreme cosmic sovereign, is called *Ṛtasya Gopā* (“guardian of *Ṛta*”) and *Dhṛtavrata* (“of unshakable laws”), yet he derives his authority from adherence to *Ṛta*, not the other way round. The Ṛgveda declares: “even the Gods cannot break the laws of Varuṇa.” This impersonal, pre-personal grounding of normative order avoids the difficulty that haunts Western natural law, the Euthyphro dilemma of whether law is good because God commands it, or God commands it because it is good. *Ṛta* precedes command. It precedes, for that matter, Heraclitus's *Logos* by roughly a millennium.

The conceptual transition from *Rta* to *Dharma* deepened rather than displaced this foundation. The *Brhadāranyaka Upaniṣad* (c. 7th–6th century BCE) at 1.4.14 narrates the creation of *Dharma* as a power superior to royal authority itself: “There is nothing higher than *Dharma*.” A weak man, the text insists, may defeat a strong man through *Dharma*, “as one contending with the king.” The passage identifies four principles that modern jurisprudence would recognise immediately: supremacy of law over sovereign power; no authority above the law; equal access to justice regardless of strength; and the identity of law with truth. This was articulated at a time when Athenian democracy had not yet been founded.

What distinguishes the Indic tradition from a merely philosophical precedent is that these principles were *institutionally elaborated*. The *Dharmasūtras* of Gautama (c. 600–400 BCE) prescribed that the king “should be impartial towards his subjects” and that failure to administer justice required the king to perform penance, a structural accountability mechanism, not a pious suggestion. Kautilya’s *Arthaśāstra*, rediscovered in 1905 and first translated to English by R. Shamasastri in 1915, prescribed functionally separated civil and criminal courts, formal judicial procedures requiring a minimum of three witnesses, appellate review, and the celebrated maxim that the king’s happiness lies in the happiness of his subjects. Book III established a hierarchy of legal sources: sacred law, evidence, custom, and royal edict, with *Dharma* supreme in cases of conflict. The *Manusmṛti* went further still: “punishment strikes down the king who swerves from his duty, together with his relatives.” One quarter of an unjust decision, Manu declared, falls upon the king himself.

The *Arthaśāstra*’s institutional apparatus is worth pausing on, because it demonstrates that these were not abstract principles awaiting implementation but operational rules governing a functioning state. The text prescribed approximately thirty superintendent positions heading distinct departments: treasury, commerce, agriculture, weights and measures, shipping, constituting a separation of administrative functions. A ministerial council constrained royal decisions; an independent oversight network monitored officials at every level; anti-corruption provisions punished malpractice; and the state compensated victims of unrecovered theft, an early form of sovereign accountability. The proportionality principle required that punishment be ‘exercised impartially in proportion to the guilt, and irrespective of whether the person punished is the King’s

son or an enemy.’ This is not mere aspiration; it is institutional design of a kind the Western tradition would not systematise until the Enlightenment.

The structural difference between *Dharma* and Western legality is not merely temporal but conceptual. Western Rule of Law, as Brian Tamanaha has mapped it, moved from “thin” formal conceptions—Dicey’s proceduralism, Joseph Raz’s explicit acknowledgment that the Rule of Law “says nothing about fundamental rights, about equality, or justice”—to “thick” substantive conceptions only in the mid-twentieth century, through Fuller’s “inner morality of law” and Dworkin’s “rights conception.” *Dharma* was substantive from its inception. It integrated moral duty, cosmic order, and legal obligation in a single normative framework. The sovereign did not create *Dharma*; he discovered and enforced it. This is a constraint more radical than Western constitutional supremacy, which still permits amendment by the very authority it purports to constrain. As Robert Lingat demonstrated, whereas European natural law “seldom went beyond the vague region of generalities,” the Hindu tradition “proceeded to deduce from these principles a mass of detailed and precise rules.”

Why, then, does the conventional account of Rule of Law begin with Athens and Runnymede rather than with the *Vedas* and *Dharmasūtras*? F.S.C. Northrop’s influential mid-twentieth-century framework cast Eastern thought as rooted in “suprasensory experience and intuition”—aesthetically rich but theoretically impoverished. Werner Menski’s critique is apt: Western comparative law has been “too parochial and eurocentric to meet global challenges.” Upendra Baxi puts it more sharply: “The patrimonial liberal Rule of Law discourse organises amnesia of alternative traditions.” To characterise *Dharma* as “religion” rather than “law” is itself an act of classification that denies legal subjectivity to non-Western civilisations, what Teemu Ruskola has called “legal orientalism.”

None of this is to suggest that the Indic legal tradition was without serious flaws; the structural hierarchies embedded in *Dharmaśāstra* demand honest acknowledgment, just as the Western canon’s historical exclusion of women, slaves, and propertyless men from legal personhood demands the same. The point is not that ancient India was a utopia of equal justice. The point is that the *structural principle*, that sovereign authority is legitimate only when it submits to a normative order it did not create, was articulated in the Indic tradition with greater depth, earlier provenance, and more elaborate institutional expression than the Western tradition has typically

recognised. The Rule of Law did not travel east from Athens; it was already here, waiting to be heard.

References

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Glossary of Non-English Terms

Ṛta: Cosmic order; the foundational Vedic principle of truth and natural law preceding and binding all beings, including the gods.

Dharma: Righteous duty, law, and moral order; the normative principle governing conduct, governance, and justice in the Indic tradition.

Dharmasūtra: Ancient Sanskrit legal texts (c. 600–100 BCE) prescribing rules of conduct, governance, and judicial procedure.

Dharmaśāstra: The broader body of Sanskrit legal literature, including the Smṛtis, elaborating rules of law, ethics, and social order.

Arthaśāstra: Kauṭilya's treatise on statecraft, governance, law, and political economy (c. 4th century BCE–early centuries CE).

Manusmṛti: The Laws of Manu; an influential Dharmaśāstra text (c. 200 BCE–200 CE) prescribing rules of kingship, justice, and social conduct.

Varṇa: Social classification in Hindu society; the four-fold categorisation of Brāhmaṇa, Kṣatriya, Vaiśya, and Śūdra.

Varuṇa: Vedic deity; supreme cosmic sovereign and guardian of Ṛta.

Vyavahāra: Legal procedure; the process of dispute resolution and judicial administration in ancient Indian law.

Danḍa: Punishment; the coercive arm of governance, identified in the Manusmṛti with Dharma itself.